

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ERNEST R. PARKER ,

Petitioner,

v.

Case No. 16-cv-939-pp

UNITED STATES OF AMERICA,

Respondent.

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 92-cr-178-pp

ERNEST R. PARKER,

Defendant.

ORDER GRANTING JOINT MOTION FOR RELIEF TO GRANT THE §2255 PETITION (DKT. NO. 17), GRANTING PETITIONER'S AMENDED MOTION TO VACATE, SET ASIDE OR CORRECT SENTENCE UNDER 28 U.S.C. §2255 IN CASE NO. 16-CV-939 (DKT. NO. 4), REOPENING CASE NO. 92-CR-178, VACATING JUDGMENT OF CONVICTION IN CASE NO. 92-CR-178, GRANTING THE JOINT MOTION FOR A RESENTENCING HEARING IN CASE NO. 92-CR-178 (DKT. NO. 306 OF THAT CASE) AND ORDERING THE PROBATION OFFICE TO PROVIDE THE COURT WITH AN UPDATE/ADDENDUM TO THE PSR BY DECEMBER 21, 2018

On October 30, 2018, the parties filed a joint motion asking the court to grant the pending §2255 petition, reopen criminal Case No. 92-cr-178, vacate the criminal judgment of conviction and set the criminal case for a resentencing hearing. Dkt. No. 15. In support of the joint motion, the parties

cite Cross v. United States, 892 F.3d 288, 307 (7th Cir. 2018) (reh'g denied August 31, 2018), which held that prisoners sentenced as career offenders under the pre-Booker guidelines' residual clause are entitled to relief. The court agrees that Cross applies to the petitioner's case. Judge Robert W. Warren sentenced the petitioner as a career offender in 1993, when the Sentencing Guidelines were mandatory; he imposed a sentence of 420 months' imprisonment to run consecutively with a previously-imposed sentence in a drug case. Under Cross, the court will resentence the petitioner without the career-offender enhancement.

The court **GRANTS** the joint motion for relief to grant the §2255 motion. Dkt. No. 17.

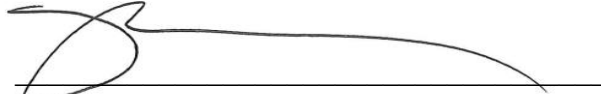
The court **GRANTS** the petitioner's amended motion to vacate, set aside or correct sentence under 28 U.S.C. §2255. Dkt. No. 4.

The court **ORDERS** the clerk of courts to reopen criminal Case No 92-cr-178. The court **VACATES** the judgment of conviction in Case No. 92-cr-178. The court **GRANTS** the parties' joint motion for a resentencing hearing. United States v. Parker, 92-cr-178, dkt. no. 306. The court **ORDERS** the U.S. Probation Office to prepare an update/addendum to the presentence

investigation report, to be filed on the docket by the end of the day on December 21, 2018. **The court's staff will contact the parties to set a date for resentencing.**

Dated in Milwaukee, Wisconsin this 19th day of November, 2018.

BY THE COURT:

A handwritten signature in black ink, appearing to be 'P. Pepper', written over a horizontal line.

HON. PAMELA PEPPER
United States District Judge